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Letter dated 4 September from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

The Counter-Terrorism Committee has received the attached report from the Republic of the Congo submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I should be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Counter-Terrorism Committee

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Annex

Letter dated 30 August 2002 from the Chargé d'affaires a.i. of the Permanent Mission of the Congo addressed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

[Original: French]

On instructions from my Government, I have the honour to transmit herewith the report of the Republic of the Congo to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001) (see enclosure).

My Government is prepared to provide any additional information the Committee deems necessary.

(*Signed*) Luc Joseph **Okio**
Chargé d'affaires a.i.

Enclosure

Report of the Republic of the Congo to the Counter-Terrorism Committee pursuant to paragraph 6 of Security Council resolution 1373 (2001)

Introduction

The Republic of the Congo has felt the effects of terrorism at home and abroad, which include the September 1989 attack on a Union de Transports Aériens (UTA) flight and has always condemned this scourge.

It considers that this barbarous and odious problem must be combated and eradicated because it constitutes a serious threat to international peace and security.

For this reason, the day after the attacks on the United States of America of 11 September 2001, the Congolese Government wholeheartedly condemned this tragedy and expressed its compassion for the American Government and people.

By causing the deaths of thousands of people, these acts demonstrated that terrorism is a horrible problem which we must eliminate at all costs.

Therefore, pursuant to Security Council resolution 1373 (2001), the Congo is working to strengthen its domestic counter-terrorism capacity and cooperation at the international level through the measures described in this report.

Paragraph 1

(a) What measures if any have been taken to prevent and suppress the financing of terrorist acts in addition to those listed in your responses to questions on 1 (b) to (d)?

The Congolese Government has taken a series of measures to prevent the financing of terrorism, including the following:

- Prior authorization from the Department of Credit and Financial Affairs is required for the transfer abroad of any amount equal to or greater than 500,000 francs CFA;
- All operations must be handled through an authorized intermediary (a bank), whether or not they are subject to prior authorization from the Department of Credit and Financial Affairs;
- Residents are prohibited from carrying out transfers and foreign exchange operations for the purpose of accumulating assets abroad; and
- The import into and export from the Central African Economic and Monetary Community (CEMAC) of notes issued by the Bank of Central African States (BEAC) is prohibited.

The new decree creating the Department of Credit and Financial Affairs and establishing its functions, which makes it responsible for combating economic crime, is designed to strengthen these measures.

Draft legislation to combat this type of crime has been prepared and includes the following measures:

- Regulation of currency transfers;
- Monitoring of all transfers abroad;
- Prevention and suppression of terrorist acts;
- Implementation of all international conventions dealing with terrorism;
- Strengthened cooperation in combating terrorism; and
- Improved cooperation between the Department and other bodies involved in the fight against terrorism, such as the customs and tax authorities, the police and the judiciary.

With respect to suppression of the financing of terrorist acts, it should be noted that the Republic of the Congo has not yet enacted specific counter-terrorism legislation defining terrorist acts as a separate crime. However, its legislation does contain provisions for the suppression of such acts.

The financing of terrorist acts is an act of complicity; the act of knowingly providing financial support to a terrorist group or criminal organization constitutes an act of complicity subject to prosecution under articles 96 and 268 of the Criminal Code and article 10 of Act No. 006-91 of 16 May 1991 on the suppression of unlawful acts against the safety of civil aviation in the Republic of the Congo, which specifically states: "The following shall be considered accomplices in an offence against the safety of civil aviation and punished as such:

- Anyone who, through gifts, promises, threats, abuse of authority or of power, plots or unlawful artifice commits such an offence or issues instructions for the commission thereof;
- Anyone who knowingly procures weapons and ammunition, instruments or any other object to be used in the commission of such an offence; and
- Anyone who knowingly aids or abets the perpetrator or perpetrators of the offence in the preparation or facilitation thereof."

Such persons shall receive the same punishment as the main perpetrator of the offence.

(b) What are the offences and penalties in your country with respect to the activities listed in this subparagraph?

The activities mentioned in this subparagraph are severely punished in the Republic of the Congo despite the fact that it has not yet enacted specific counter-terrorism legislation. Article 265 of the Criminal Code states that:

> "Any criminal conspiracy against person or property is an offence against public order."

Article 267 of the Code adds that: "In the case of an isolated offence, the offenders and the leaders, commanders-in-chief and subcommanders of the conspiracy shall be sentenced to a term of forced labour."

According to article 268 of the Code, "Anyone who performs any service whatsoever for such groups or who knowingly and willingly provides them or their members with weapons, ammunition, criminal instruments, housing, refuge or a meeting place shall be sentenced to a term of imprisonment."

Performance of a service, such as the provision of funds, to a criminal conspiracy constitutes a crime against public order and is punishable by imprisonment.

(c) What legislation and procedures exist for freezing accounts and assets at banks and financial institutions?

(d) What measures exist to prohibit the activities listed in this subparagraph?

The Republic of the Congo uses the Central African Banking Commission (COBAC) rules to freeze or block the accounts and assets of terrorists in banks and financial institutions.

It also uses these rules to prohibit banks and financial institutions involved in money-laundering from operating in the national territory.

It should be stressed that the legal regime established in these rules gives COBAC the right to monitor the activities of these credit institutions and to impose penalties if they fail to comply with the regulations currently in force.

Article 1 of the annex to the Convention of 16 October 1990 establishing COBAC states that this subregional organization is responsible, inter alia, for:

- Monitoring the operations of member States' credit institutions;
- Ensuring the quality of their States' financial situation; and
- Ensuring respect for professional ethics.

Article 2 of this Convention states that all credit institutions of member States are under COBAC's supervision and are required to comply with its decisions, which are fully enforceable once they have been communicated to the national monetary authorities and to the institutions concerned.

Pursuant to article 34 of the Convention harmonizing the banking regulations of the Central African States of 17 January 1992, COBAC may take decisions on conditions governing the operations of credit institutions, particularly with respect to their relations with clients.

Article 39 of this Convention states that COBAC is empowered to issue injunctions or warnings to the institutions under its supervision, impose disciplinary sanctions on them and on their directors and auditors, and appoint temporary administrators or receivers.

It was pursuant to these rules that the activities of a microfinance institution accused of money-laundering (Salu Humberto Brada) were suspended in the Congo in March 2002.

In that context, the Ministry of Economic Affairs, Finance and the Budget held a seminar on microfinance in Brazzaville in July 2002 in order to better organize the sector and to ensure that officials working therein fulfilled their obligation to monitor atypical financial flows.

An office responsible for monitoring activities in that sector will soon be established in that Ministry.

The measures described under paragraph 1 (a) also apply to States' obligation to prohibit their nationals or anyone within their territory from providing funding to the perpetrators of terrorist acts.

Paragraph 2

(a) What legislation or other measures are in place to give effect to this subparagraph? In particular, what offences in your country prohibit (i) recruitment to terrorist groups and (ii) the supply of weapons to terrorists? What other measures help prevent such activities?

Recruitment to terrorist groups is a punishable offence in the Republic of the Congo; under Congolese law, anyone who plays any role or exercises any function whatsoever in a criminal group shall be sentenced to death.

Article 96 of the Criminal Code states: "Anyone who assumes command of an armed group or who plays any leadership or other role therein in order to invade the domains, properties, treasuries, squares, fortified towns, forts, warehouses, arsenals, ports, vessels or buildings belonging to the State; to steal from or divide property belonging to the public, the State or a group of citizens; or to attack or resist Government forces taking action against the persons responsible for these offences shall be sentenced to death".

Paragraph 2 of this article concerns the punishment of persons who furnish weapons to such groups:

"The same sentence shall be imposed on anyone who commands such a group; recruits or orders recruitment to it; organizes or orders the organization thereof; knowingly or deliberately furnishes or procures weapons, ammunition or criminal instruments or sends supply convoys; or colludes in any other way with the leaders or commanders of such groups".

It is clear from the wording of this paragraph that the provision of weapons, ammunition or criminal instruments to a criminal group is a capital offence under Congolese law.

Order No. 62-24 of 16 October 1962, which regulates matters relating to weaponry, weapons and ammunition in the Republic of the Congo, stipulates that trade in weapons is not authorized within that country and that only the State may acquire, transfer or possess them.

Article 2 of the draft order for implementation of the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and their Destruction is designed to strengthen this legislative instrument:

"The design, production, protection, acquisition, stockpiling, storing, supply, transfer, import, export, transport and use of anti-personnel mines, including the act of assisting, encouraging or inciting another person to engage in these activities, are prohibited."

Article 5 of the draft order states that all such offences, including the provision of anti-personnel mines to terrorist groups, shall be punishable by a life sentence of forced labour and a fine of 500,000 to 3,000,000 francs CFA.

In order to prevent former soldiers from illegally retaining weapons following the ceasefire agreement and the cessation of hostilities of November and December

1999, the Government signed an agreement for the collection of weapons and the reintegration of former militia members with the United Nations Development Programme (UNDP) in July 2000.

This project, which is being implemented with the help of the International Organization for Migration (IOM), has already achieved the following results:

- 7,249 former militia members have received reintegration assistance;
- 2,279 projects have been funded for an average of three beneficiaries per project; and
- 13,000 weapons and pieces of ammunition have been collected and nearly 11,000 of them have been destroyed.

(b) What other steps are being taken to prevent the commission of terrorist acts, and in particular, what early warning mechanisms exist to allow exchange of information with other States?

The Republic of the Congo possesses a number of mechanisms for the exchange of information used to combat terrorism in cooperation with other States.

For example, under the non-aggression pact between the Republic of the Congo and the Democratic Republic of the Congo of 29 December 1998, the two parties undertake to:

- Carry out joint exploratory missions in the zones affected by shared security problems; and
- Exchange information on security-related matters.

Exchange of information is also among the primary functions of the Early Warning Mechanism (MARAC) established by the 24 February 2000 Protocol on the Council for Peace and Security in Central Africa (COPAX).

This mechanism is responsible for collecting and analysing data in order to prevent crises and conflicts in the subregion (art. 21).

Article 2 of its rules of procedure states that the Council has a governing body which is located at the headquarters of the Economic Community of Central African States (ECCAS) and which includes:

- An office responsible for ongoing monitoring and collection of data on the security situation of the subregion from national and international United Nations and Organization of African Unity (OAU) networks and from other public, private, national and international organizations and institutions;
- An office responsible for information analysis and evaluation, the purpose of which is to identify situations that constitute a potential threat to the peace and security of a State or group of States in the subregion;
- An office responsible for maintaining a database on Central Africa and for storing, archiving, preserving and disseminating information on all relevant MARAC materials in written, printed, photographic, video, audio, optical, electronic, mechanical, magnetic or numeric form.

In addition, there is the International Criminal Police Organization (Interpol), which includes over 170 member States; it is a system of multilateral

communication that constitutes an effective instrument for the collection and exchange of information between the police departments of member States in the context of the fight against terrorism.

(c) What legislation or procedures exist for denying safe haven to those who finance, plan, support, or commit terrorist acts, or provide safe havens?

Pursuant to resolution 1373 (2001), a Committee on Eligibility for Refugee Status was established after the attacks of 11 September 2002 (Decree No. 8041 of 28 December 2001). The Committee may deny or revoke refugee status in the case of individuals strongly suspected of involvement in terrorist acts or in other acts contrary to the purposes and principles of the OAU and the United Nations.

Under article 1 of the above-mentioned Decree, this Committee's responsibilities include:

- Ensuring the implementation of international and regional conventions on the status of refugees;
- Reviewing applications for refugee status;
- Taking decisions on the loss of refugee status; and
- Issuing advisory opinions on the implementation of all expulsion and extradition measures involving refugees and asylum-seekers.

(d) What legislation or procedures exist to prevent terrorists acting from your territory against other States or citizens?

The Republic of the Congo is a peace-loving state which respects the rules of international law that govern relations between States. It is deeply committed to the principles of good-neighbourliness, non-aggression and non-interference in the internal affairs of other States. Therefore, it does not allow its territory to be used as a "home base" by terrorist groups.

Furthermore, the Congo is a party to major international and regional conventions such as the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Constitutive Act of the African Union, the Protocol on the Council for Peace and Security in Central Africa (COPAX) and the Convention Governing the Specific Aspects of Refugee Problems in Africa, which prohibit such acts.

Under article 4 of the Constitutive Act of the African Union, for example, States parties clearly renounce terrorist acts and subversive activities.

Since officially ratified international treaties and agreements are an integral part of Congolese law, their provisions are binding on the Republic of the Congo.

(e) What steps have been taken to establish terrorist acts as serious criminal offences and to ensure that the punishment reflects the seriousness of such terrorist acts?

As stated above, the Congo has not yet enacted specific counter-terrorism legislation. However, the offences mentioned in paragraph 2 (e) of resolution 1373 (2001) are subject to severe penalties under articles 96, 265, 267 and 268 of the Criminal Code (see the discussion under paragraph 1 (a) and (b) and paragraph 2 (a) above).

(f) What procedures and mechanisms are in place to assist other States?

The Congo assists other States in the areas mentioned in this paragraph through the exchange of information described under paragraph 2 (b) above.

Assistance also takes the form of judicial cooperation through, inter alia, the agreements on mutual judicial assistance which the Congo has concluded with other States.

Under these conventions, States parties undertake, inter alia, to turn over to each other's authorities anyone present in their territory who is subject to prosecution or has been convicted of an offence by the judicial authorities of the other State party. They also deliver to each other certain legal instruments such as letters rogatory.

(g) How do border controls in your country prevent the movement of terrorists? How do your procedures for issuance of identity papers and travel documents support this? What measures exist to prevent their forgery etc.?

Several departments are involved in border controls in the Republic of the Congo; in particular, these include customs, the security forces and the National Civil Aviation Agency (ANAC).

1. Customs

The customs posts, established at border points, inspect goods, persons and currency upon entry into and exit from the national territory.

Article 78 of the Customs Code states that "Customs agents may verify the identity of anyone entering or leaving the customs territory or present in the vicinity of the customs posts.

Anyone suspected of or wanted for the commission of acts of terrorism or organized crime is arrested during this verification.

It is important to note that under articles 70 ff. of the Customs Code, customs agents are instructed to command and signal the drivers of vehicles to halt so that they and their cargo can be searched. If a driver fails to comply despite the loud, clear warnings, the use of force is authorized.

In order to locate suspicious goods, including those which could be used by terrorists, customs agents are authorized under article 75 of the Customs Code to make home visits — in other words, to carry out searches — in the company of a local municipal official, whether a judicial police officer or a representative of the regional or local authority.

In the course of the search, under article 76 of the Code, these agents may demand to see any type of document relating to the import or export of such goods.

2. The security forces

The security forces are also involved in border inspections in order to ensure that anyone wishing to enter the country meets the requirements for admission thereto.

Persons leaving the country are also subject to such inspections. Article 3 of Act No. 007-90 of 30 August 1990, which establishes the applicable air transport

safety regulations, states that "all departing passengers, cabin and checked baggage, freight, air mail packages and provisions to be loaded onto the aircraft" are subject to this measure.

A National Counter-Terrorism Committee, which includes several specialized departments, has recently been established in order to strengthen these inspections.

3. National Civil Aviation Agency

The protection of civil aviation from criminal and terrorist threats is a major concern of the National Civil Aviation Agency.

It has an arsenal of legal instruments designed to achieve this goal, including the following:

- Act No. 007-90 of 30 August 1990, which establishes the applicable regulations for the safety of air transport;
- Act No. 006-91 of 16 May 1991 on the suppression of unlawful acts against the safety of civil aviation;
- Act No. 23-93 of 23 August 1994, which establishes a security fee;
- Decree No. 91-461 of 20 March 1991, which regulates conditions of access to and movement in Congolese airports;
- Decree No. 94-719 of 29 November 1994, which regulates conditions of access to and movement in Protocol Lounges; and
- Decree No. 96-230 of 14 May 1996, which establishes and regulates the National Civil Aviation Safety Committee.

This set of legal instruments makes access to and movement within airports subject to strict regulation.

Under article 5 of Decree No. 91-461 of 20 May 1991, the following areas are subject to strict monitoring:

- Airport departure and arrival lounges and the surrounding areas, including all areas used for international and national traffic and the premises of the police, customs and health services;
- Areas used for cargo shipping and storage and buildings and areas reserved for cargo under Customs authority; and
- Traffic areas used for the loading and unloading of passengers, baggage and cargo.

These areas are accessible only to passengers and to public or airline officials authorized to enter in the performance of their duties.

In order to improve this monitoring following the events of 11 September 2001, the National Civil Aviation Agency (ANAC) set up a programme to carry out the following activities in the areas of human resources, equipment and procedures:

- Human resources
  - Organization of training courses in security issues, conducted in partnership with the national police, the gendarmerie and the Embassy of France, for staff assigned to security duties;
  - Participation in the various training courses organized by the International Civil Aviation Organization (ICAO);
  - Purchase of five standardized training kits to provide instruction for staff assigned to security duties.
- Equipment
  - Preparation of new badges;
  - Purchase of shuttle buses to take passengers between planes and the terminal;
  - Purchase of x-ray scanners and metal-detector arches;
  - Renovation of certain areas of the air terminals;
  - Repairing of gaps in the airport perimeter fence;
  - Purchase of one four-wheel-drive vehicle for patrols;
  - Rehabilitation of the communications network.
- Procedures
  - Strict enforcement of inspection/screening of passengers;
  - Individuals must wear badges, which must be visibly displayed, and vehicles must have stickers;
  - Crossing of runways strictly prohibited;
  - Restoration of police and gendarmerie vehicle and foot patrols within the airport perimeter;
  - More intensive security checks;
  - Stricter limits on public vehicle access to the restricted area;
  - Elimination of vandalism and undesirable individuals from the cargo area by sending in the air transport gendarmerie;
  - Matching of passengers to baggage on sensitive flights.

Checks performed when issuing travel and identity documents also play a significant role in fighting terrorism.

Such checks usually involve verifying the personal data, identity and criminal record of applicants. Decree 98-360 of 30 October 1998, which amends and establishes conditions for the issuance of ordinary passports, stipulates in article 2 that:

> "Ordinary passports shall be issued within two weeks to any Congolese citizen aged three years or more, on production of:
>
> - A duly completed passport application form;
> - A birth certificate;

- A certificate of nationality issued no more than one year previously;
- Proof of a clean criminal record, issued no more than three months previously;
- Evidence of the applicant's occupation;
- Four colour full-face identity photos;
- If the applicant is a minor, parental permission."

It is unlawful to falsify such documents. Article 153 of the Criminal Code states clearly that:

> "Anyone who forges a passport or hunting licence, alters a genuine passport or hunting licence, or who uses a passport or hunting licence that has been forged or altered, shall be sentenced to a prison term of from six months to three years."

It should be pointed out that the Congolese Government has found it very difficult to perform these checks, particularly at land, sea and river borders, because of a shortage of material and human resources.

Paragraph 3

(a) What steps have been taken to intensify and accelerate the exchange of operational information in the areas indicated in this subparagraph?

The answer to this question appears in the reply regarding subparagraph 2 (b) above.

(b) What steps have been taken to exchange information and cooperate in the areas indicated in this subparagraph?

These issues have been examined in the replies regarding subparagraphs 2 (b) and 2 (f) above.

(c) What steps have been taken to cooperate in the areas indicated in this subparagraph?

The Republic of the Congo has assumed a number of bilateral and multilateral obligations which enable it to cooperate with other States in fighting terrorism.

Bilateral cooperation

In addition to the agreements described above in the replies regarding subparagraph 2 (b) above, the Republic of the Congo has concluded a number of bilateral treaties with other States concerning such matters as mutual legal assistance and security, which are important for the prevention and punishment of terrorism.

Multilateral cooperation

The Republic of the Congo is a party to a number of international conventions on terrorism, including:

- Convention on Offences and Certain Other Acts Committed on Board Aircraft, of 14 September 1963;

- Convention for the Suppression of Unlawful Seizure of Aircraft, of 16 December 1970;

- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, of 23 September 1971.

(d) What are your Government's intentions regarding signing and/or ratifying the conventions, protocols and resolutions referred to in this subparagraph?

The Republic of the Congo intends to become a party to all the international treaties relating to terrorism. The ratification procedures for the following have already been launched:

- Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, of 14 December 1973.

- International Convention against the Taking of Hostages, of 17 December 1979;

- International Convention for the Suppression of Terrorist Bombings, of 15 December 1997;

- International Convention for the Suppression of the Financing of Terrorism.

Ratification procedures are under way.

(e) Provide any relevant information on the implementation of the conventions, protocols and resolutions referred to in this subparagraph.

As the replies given in this document illustrate, the Republic of the Congo respects the obligations deriving from the conventions, protocols and resolutions referred to in this subparagraph.

(f) What legislation, procedures and mechanisms are in place for ensuring asylum-seekers have not been involved in terrorist activity before granting refugee status? Please supply examples of any relevant cases.

The reply relating to subparagraph 2 (c) gives sufficient detail on this issue.

(g) What procedures are in place to prevent the abuse of refugee status by terrorists?

See the reply relating to subparagraph 2 (c) above.

Conclusion

The Republic of the Congo strongly condemns terrorism. It is deeply committed to the universal values of peace and tolerance and to the principles of good-neighbourliness and non-interference in the internal affairs of other States.

In keeping with this policy, despite the unfavourable economic climate, it has taken steps to implement United Nations Security Council resolution 1373 (2001) since its adoption in September 2001.

The Republic of the Congo can affirm that it has an extensive enough legal basis to implement the provisions of the resolution, even though it has not yet

enacted specific counter-terrorism legislation defining terrorist acts as a separate crime.

The Congolese Government nevertheless plans to make gradual improvements to its legal framework, inter alia, by amending the Criminal Code, the Code of Criminal Procedure and the Nationality Code so as to include provisions on terrorism.

It has also undertaken to step up international cooperation to improve its arrangements for exchanging information and its border checks and checks on movements of funds. If it is to achieve this, it will need assistance from the international community, including the United Nations.